

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MICHAEL DARREN COLLINS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:21-CV-458-MHT-SRW
)	[WO]
WARDEN JACKSON, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Pro se Plaintiff Michael Collins filed this 42 U.S.C. § 1983 action on July 6, 2021. On July 12, 2021, the Court entered an order of procedure. Doc. 4. The order directed Defendants to file an answer and written report and also directed Plaintiff to “immediately inform the court and Defendants or Defendants’ counsel of record . . . of any change in his address.” Doc. 4 at 3, ¶8. The order also advised Plaintiff that “[f]ailure to provide a correct address to this court within ten (10) days following any change of address will result in the dismissal of this action.” Doc. 4 at 3, ¶8.

On August 3, 2021, Plaintiff’s copies of court documents filed July 16, 2021 (Doc. 6), and July 23, 2021 (Doc. 10), were returned to the Court marked as undeliverable because Plaintiff is no longer detained at the last service address he provided.¹ Accordingly, the Court entered an order on August 3, 2021, requiring that by August 13, 2021, Plaintiff must file with the Court a current address or show cause why this case should not be dismissed for his failure to prosecute this action. Doc. 11. This order specifically advised

¹ The last service address of record for Plaintiff is the Elmore County Jail in Wetumpka, Alabama.

Plaintiff that this case could not proceed if his whereabouts remained unknown and cautioned him his failure to comply would result in the dismissal of this case. *Id.* Plaintiff's copy of the August 3, 2021, order was returned to the Court on August 17, 2021, marked as undeliverable. The Court therefore concludes that this case should be dismissed.

A federal district court has the inherent power to dismiss a case *sua sponte* for failure to prosecute or obey a court order. *See, e.g., Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–30 (1962); FED. R. CIV. P. 41(b). The Eleventh Circuit has made clear that “dismissal is warranted only upon a ‘clear record of delay or willful contempt and a finding that lesser sanctions would not suffice.’” *Mingo v. Sugar Cane Growers Co-Op of Fla.*, 864 F.2d 101, 102 (11th Cir. 1989) (per curiam) (emphasis omitted) (quoting *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985)). Here, the undersigned finds that Plaintiff has willfully failed to file a response in compliance with the Court's August 3, 2021 order either directly, or by failing to comply with the Court's prior order that Plaintiff must inform it immediately of a change in address. And, in light of Plaintiff's disregard for orders of this Court, the undersigned further finds that lesser sanctions than dismissal would not suffice in this case.

Accordingly, the undersigned Magistrate Judge RECOMMENDS that this case be DISMISSED without prejudice.

A party may file objections to the Recommendation **by September 7, 2021**. Any objections filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which objection is made. Frivolous, conclusive or general objections will not be considered by the District Court. This Recommendation is not a final order and, therefore it is not appealable. Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party

from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall “waive the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions” except upon grounds of plain error if necessary in the interests of justice. 11TH Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE, on this the 24th day of August, 2021.

/s/ Susan Russ Walker
Susan Russ Walker
United States Magistrate Judge